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11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF WASHINGTON**
AT SPOKANE

13 STATE OF WASHINGTON, *et al.*,

14 Plaintiffs,

15 v.

16 UNITED STATES DEPARTMENT OF
17 HOMELAND SECURITY, *et al.*,

18 Defendants
19
20
21
22

No. 4:19-cv-5210-RMP

REPORT PURSUANT TO MAY 13,
2020 ORDER

1 Defendants respectfully submit this report pursuant to the Court's May 13, 2020
2 Order Denying in Part and Granting in Part Defendants' Motion to Stay Discovery Order
3 re: Privilege Log ("Order"). ECF No. 219. The Court ordered Defendants to produce a
4 privilege log pertaining to Defendants' administrative record on a rolling basis starting
5 on June 12, 2020. *Id.* at 6. The Court further ordered Defendants to make reports to the
6 Court and Plaintiffs every other Friday, on their progress toward completion of the
7 privilege log. *Id.*

8 **Notifying Custodians of Obligation to Preserve Documents**

9 First, the Court ordered Defendants to report on their progress in "notifying
10 potential custodians of their obligation to preserve potentially relevant documents, even
11 if assertedly privileged[.]" Order at 6. As discussed in Defendants' June 12, 2020 report,
12 Defendants have notified all potential custodians of their obligation to preserve
13 potentially relevant documents, even if assertedly privileged.

14 **Segregating Privileged Documents for Review**

15 Second, the Court ordered Defendants to report on their progress in "segregating
16 all assertedly privileged documents for review." Order at 6.

17 Defendants previously reported that all email records for all custodians have been
18 collected and batched for review by the Department of Justice. This week, however,
19 USCIS identified additional emails for one custodian (Kathy Nuebel-Kovarik) that had
20 not previously been collected due to an error in the search used to collect her documents
21 previously. Those additional emails have been collected and provided to the Department
22 of Justice, where they are being processed for inclusion in the review database.

1 Although email records are expected to constitute the vast majority of documents
2 subject to the Court's Order, Defendants are also working to collect non-email electronic
3 documents and paper documents, if any, that do not also exist in electronic form. At this
4 time, due to the COVID-19 crisis and the telework status of most agency personnel,
5 Defendants cannot determine whether there are any paper documents that will need to be
6 collected, as those documents are physically located in agency offices and are therefore
7 currently inaccessible.

8 **Logging Privileged Documents**

9 Third, the Court ordered Defendants to report on their progress in logging
10 privileged documents pursuant to Fed. R. Civ. P. 26(b)(5)(A). Order at 6. As of October
11 2, 2020, 48,339 documents have been batched for review in the DOJ document review
12 platform.

13 As of two weeks ago, 15,765 of those documents had been reviewed. Since that
14 time, USCIS has committed substantial additional resources to accelerate progress on the
15 document review. Specifically, USCIS assigned many agency attorneys to a temporary
16 detail to conduct an initial review of the remaining administrative record documents. As
17 of October 2, 2020, 47,926 of the documents have undergone an initial review.¹
18 Defendants expect that less than 10,000 of the documents will require second level review
19 to make further determinations about whether the records fall within the scope of the
20

21 ¹ In percentage terms, roughly 99.1% of the batched documents have undergone initial
22 review. As noted above, additional documents may be added to the review platform.

1 Court's order and to make privilege determinations. The documents awaiting second
2 level review include many documents that contain third party equities and which
3 Defendants expect to include in future installments of the privilege log after consulting
4 with the appropriate third parties. 208 documents are currently listed on the privilege
5 log.

6
7 Dated: October 2, 2020

Respectfully submitted,

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14 /s/ Joshua M. Kolsky
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CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all users receiving ECF notices for this case.

/s/ Joshua Kolsky

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